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10/786,180	02/25/2004	Roger W. Meads	MEADS-08913	2384

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MEDLEN & CARROLL, LLP  
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EXAMINER
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VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

MAIL DATE	DELIVERY MODE
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07/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/786,180

Applicant(s)

MEADS ET AL.

Examiner

Gail Verbitsky

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 1 and 12 are finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this case, neither the limitation stating "is detectable by an operator" nor the operator has not been described in the specification.

Claims 1-19 are rejected by virtue of their dependency on claims 1 and 12 respectively.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 103 that form the basis for the rejections under this section made in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6, 9 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack (U.S. 4854328) and Urbas et al. (U.S. 6900721) [hereinafter Urbas].

Pollack discloses a device in the field of applicant's endeavor comprising an implant (ear tag) providing a video/ audio signal at the location of an animal the signal is indicative of a physiological parameter (temperature, col. 8, line 8) of the animal.

Therefore, if there is an operator standing in the vicinity of the animal, the operator could be able to detect the visual/ audio signal. The implant comprises a unique animal

ID number (col. 2, lines 38-39). The device also comprises a receiver and a transmitter while the receiver can be operatively connected to a re-transmitter for wirelessly transmitting the signal to a remote monitoring location/ processor.

Pollack does not teach that the monitoring device/ processor sends messages (two-way wireless communication).

Urbas discloses a device in the field of applicant's endeavor comprising a processor (interrogator, inherently sending messages to an implantable transponder having a temperature sensing thermistor. The device could be used for animal temperature measurement and identification.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to have two way communication system, as taught by Urbas, in order to not only to receive data from the implant but also to interrogate the implant and send different command to the implant, as it is very well known in the art.

4. Claims 11-13, 19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack (U.S. 4854328) and Urbas et al. (U.S. 6900721) [hereinafter Urbas] as applied to claims 1-4, 6, 9 above, and further in view of Kennedy.

Pollack and Urbas disclose the device as stated above.

They do not explicitly teach the limitations of claims 11-13 and 19.

Kennedy discloses in Fig. 1 a remote telemetry system/ method comprising an implantable temperature sensing device (transmitter) implanted in vagina of a (dairy) cow (col. 3, line 27) to determine an estrus temperature of the cow, a signal receiver

/receiving antenna and a digital computer, inherently, acting as a processor and a digital access device, each temperature sensing device comprises an identification signal to indicate the cow identity and its temperature (col. 3, lines 8-13) and thus, estrus time. temperature). Kennedy states that the cows are being monitored continuously (over extended time) to determine the estrus, and thus, fluctuation (increase) from a normal, temperature, and the signals are received and decoded using programs (col. 6, lines 36-52), inherently, recognizing the estrus and, inherently, notifying the operator. It is also, inherent, that the temperature fluctuation/ increase is compared with a normal cow temperature.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Pollack and Urbas, so as to use it with a dairy cow to determine the cow's temperature and estrus, as taught by Kennedy, so as to provide the operator with data that the cow can deliver.

The method steps will be met during the normal operation of the device stated above.

5. Claims 10-11 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack (U.S. 4854328) and Urbas et al. (U.S. 6900721) [hereinafter Urbas] as applied to claims 1-4, 6, 9 above, and further in view of the Prior Art by Kennedy [hereinafter Prior art].

Pollack and Urbas disclose the device/ method as stated above.

They do not state that the receiving device is positioned in a milking parlor.

Prior art states that the receiving device (monitoring station) could be positioned in a milking (parlor) (col. 6, line 48). This would suggest that the cow is a dairy/ milking cow

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to position the receiver in a milking parlor, as taught by the Prior art, so as to minimize unnecessary transmission, and thus, manufacturing costs, especially, if it is known that the cows of interest are located close/ in the milking parlor.

6. Claim 8 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack and Urbas as applied to claims 1-4, 6, 9 above, and further in view of Stafford et al. (U.S. 5482008).

Pollack and Urbas disclose the system/ method as stated above.

They do not explicitly teach that the implant is a microchip comprising an ID number, as stated in claim 8.

Stafford discloses a device in the field of applicant's endeavor comprising a system having a temperature-sensing device (microchip) 32 and a microchip code circuit (identification device) 5.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas so as to have a microchip comprising (responsible for) the ID number, as taught by Stafford, so as to minimize the dimensions of the device, and simplify its control, as very well known in the art.

7. Claim 7 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack and Urbas, as applied to claims 1-4, 6, 9 above, and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Pollack and Urbas disclose the system/ method as stated above.

They do not explicitly teach the limitations of claim 7.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and digital access device being a PDA (Personal Data Assistance) wireless communication device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, as very well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use PDA wireless communication device, as taught by Han, in order to transmit data and determine a patient's location by means of a known standard internet program, so as to minimize manufacturing costs by using a known program.

8. Claims 14-17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack, Urbas and Kennedy, as applied to claims 11-13, 19 above, and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Pollack and Urbas disclose the system/ method as stated above.

They do not explicitly teach the limitations of claims 14-17.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and digital access device being a PDA (Personal Data Assistance) wireless communication device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, as very well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use PDA wireless communication device, as taught by Han, in order to transmit data and determine a patient's location by means of a known standard internet program, so as to minimize manufacturing costs by using a known program.

The method steps will be met during the normal operation of the device stated above.

9. Claim 7 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack and Urbas, as applied to claims 1-4, 6, 9 above; and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Pollack and Urbas disclose the system/ method as stated above.

They do not explicitly teach the limitations of claim 7.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and PDA (Personal Data Assistance) wireless communication device.



Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, as very well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use PDA wireless communication device, as taught by Han, in order to transmit data and determine a patient's location by means of a known standard internet program, so as to minimize manufacturing costs by using a known program.

10. Claim 15-17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack, Urbas and Kennedy, as applied to claims 11-13, 19 above, and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Pollack, Urbas and Kennedy disclose the system/ method as stated above.

They do not explicitly teach the limitations of claims 15-17.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and PDA (Personal Data Assistance) wireless communication device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack, Urbas and Kennedy, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, as very well known in the art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use PDA wireless communication device, as taught by Han, in order to transmit data and determine a patient's location by means of a known standard internet program, so as to minimize manufacturing costs by using a known program.

The method steps will be met during the normal operation of the device stated above.

11. Claim 5 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pollack and Urbas as applied to claims 1-4, 6, 9 above, and further in view of Hamel et al. (U.S. 6622567) [hereinafter Hamel].

Pollack and Urbas disclose the system/ method as stated above.

They do not explicitly disclose that the transmission is a RFID transmission of claim 5.

Hamel discloses a device wherein the information has been transmitted using a RFID chip.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Pollack and Urbas, so as to use RFID wireless communication device, as taught by Han, because both of this method are using wireless communication by means of radio frequency, as well known in the art, and because both of them are alternate types of the transmission means which will perform the same function, if one is replaced with the other.

***Response to Arguments***

12. Applicant's arguments filed on April 09, 2007 have been fully considered but they are not persuasive. The instant amendment does not make the claims allowable due to the following reasons: in the telephone interview, Applicant stated that the limitation stating "detectable by an operator at the location of the animal upon receipt the message" would be critical and would distinguish the invention from the prior art, however, upon further review, the Examiner found out that this limitation has not been described in the specification. Therefore, this limitation, absent any criticality, does not make the claim allowable.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Wallace et al. (U.S. 4865044) [hereinafter Wallace] discloses a system comprising an implantable (implant) in a cow ear temperature sensing device (transmitter) comprising an identification number generated/ processed by an encoder (processor) to be transmitted along with a temperature sensed, a signal receiver comprises a decoder (device receiving a bit rate/ digital access device from the transmitter, and means (identification device) comprising identification code (col. 2, lines 35-46), thus, means in the implanted transmitter that used for identification or location. Also, the fact that Wallace discloses the identification code/ number would suggest that there is an identification device bearing/ storing the identification code/ number, and that the information should become available to an operator one way or another, i.e., as visual, auditory or visual/ auditory signal, so as to correlate the temperature to the particular cow.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2859

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

*Gail Verbitsky*

*Primary Patent Examiner, TC 2800*



June 25, 2007